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April 23, 2024

VIA EMAIL

Board of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809
blnr.testimony@hawaii.gov

Re: Statement of Position – The Albert Trust
Hearing: April 26, 2024
Proposed DLNR Enforcement Action

Dear Sir/Madam:

As you know, this law firm represents Kevin S. Albert and Kimberley L. Albert (the “**Alberts**”), Trustees of the Albert Revocable Trust (the “**Trust**”) with respect to a proposed enforcement action being brought before the Board of Land and Natural Resources (“**Board**”) by the Hawaii Department of Land and Natural Resources (“**DLNR**”), Division of Aquatic Resources (“**DAR**”). The purpose of this letter is to remind the Board of the pending DLNR theft investigation, re-emphasize the Albert’s position regarding the proposed enforcement action, and provide a courtesy update on the current contact information for Mr. Jim Jones.

As a reminder, last year the DLNR assigned an investigator, Stacey R. Yamashita to investigate the theft of the vessel, *MV Nako*a (the “**Vessel**”) on Friday, February 17, 2023. This theft took place three days **before** the grounding of the Vessel on Monday, February 20, 2023. We understand that this theft investigation report has been submitted to Officer Yamashita’s supervisor and is awaiting final approval. At this stage, it is our position that it would be prudent to wait for the completion and release of the theft investigation report before the Board proceeds with any enforcement action. Any assessment of liability prior to the release of the DLNR’s own theft investigation report would be premature.

Additionally, the Alberts maintain that: (1) there is no basis to impose liability against either the Alberts or the Trust here because the grounding took place following the **theft** of the Vessel, and neither the Alberts nor the Trust violated any provisions of the Hawaii Administrative Rules; (2) the damage related to the initial grounding must be separated from the damage related to the damage caused by the salvage; and (3) DLNR and its chosen salvor were the cause of the much greater salvage damage and they should be responsible for the damage caused by their choices and conduct.

Lastly, according to recent court filings, the most current address for Mr. Jim Jones and Noelani Yacht Charters, LLC is: 360 Anonia Street, Honolulu, HI 96821. The Alberts provide

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this information as a general courtesy to the Board as the address listed on "ITEM F-5" is not current.

Please do not hesitate to contact me if you have any questions.

Sincerely,

McCORRISTON MILLER MUKAI MacKINNON LLP

A handwritten signature in blue ink that reads "Randall K. Schmitt". The signature is written in a cursive style with a large, stylized "R" and "S".

Randall K. Schmitt

cc: Client (via email only)
Danica Swenson, Esq.